Filed 3/25/19 PLL, LLC v. The Carlton Group, LTD. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

PLL, LLC, Plaintiff and Appellant, v. THE CARLTON GROUP, LTD., et al., Defendants and Respondents.	B280854 (Los Angeles County Super. Ct. No. SC121980)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Hart Cole, Judge. Affirmed.

Williams & Kilkowski and James M. Kilkowski for Plaintiff and Appellant PLL, LLC.

Halling Meza, Chris W. Halling and Cameron M. Halling, for Defendants and Respondents Carlton Advisory Services, Inc.; The Carlton Group, Ltd.; and Howard Michaels.

Appellant PLL, LLC ("PLL") appeals from a judgment entered after the trial court granted summary adjudication in favor of Defendants Carlton Advisory Services, Inc., The Carlton Group, Ltd., and Carlton's Chief Executive Officer Howard Michaels (collectively referred to as "Carlton") on its claims for breach of fiduciary duty by receiving secret profits and unjust enrichment.[1] PLL contends triable issues of material fact exist as to both claims. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Phase II Real Estate Development Deal

PLL, a real estate development company, was interested in acquiring the land at 401 Harrison Street in San Francisco and developing the property into a luxury residential high-rise that would be known as One Rincon Hill Phase II ("Phase II"). Carlton, a real estate advisory firm, worked with PLL with a goal of raising approximately $20 million in capital for the Phase II project. Carlton identified Principal Real Estate Investors ("Principal") as a potential investor and partner in the Phase II project. Ultimately, Principal acquired and developed Phase II without PLL's involvement.

This series of events sparked multiple actual or threatened lawsuits, including one brought by PLL against Principal (which

---

[1] The trial court denied summary adjudication as to PLL's claims for breach of oral contract, professional negligence, and breach of fiduciary duty. Those three claims proceeded to a bench trial and resulted in judgment in favor of Carlton on all three causes of action. PLL is not appealing the disposition of those causes of action that went to trial.

resulted in a settlement in January 2014 pursuant to which Principal paid PLL $3 million), a threatened lawsuit by Carlton against Principal (leading to a settlement in August 2012 pursuant to which Principal paid Carlton $2 million), and the instant lawsuit involving claims by PLL against Carlton.

2. PLL's Complaint

PLL's operative complaint against Carlton alleged five causes of action: breach of oral contract (first cause of action); professional negligence (second cause of action); breach of fiduciary duty (third cause of action); breach of fiduciary duty by receiving secret profits (fourth cause of action); and unjust enrichment (fifth cause of action).

PLL alleged that in the spring of 2011, PLL engaged Carlton as its agent and real estate broker to raise approximately $20 million for the purpose of acquiring and developing Phase II. Carlton agreed with PLL that prior to providing any confidential information about Phase II to any potential investor, Carlton would require such investor to sign a non-circumvention agreement that would prohibit the investor from acquiring or seeking to acquire the Phase II property without PLL, for a two-year period. After Principal expressed interest in investing in the Phase II deal, Carlton provided confidential information to Principal without first obtaining Principal's agreement to a non-circumvention provision. Thereafter, Principal circumvented PLL and on its own purchased Phase II through a subsidiary.

PLL's causes of action relating to Carlton's failure to obtain Principal's agreement to a non-circumvention provision are not at issue in this appeal. The two causes of action that are at issue concern the propriety of Carlton's receipt of a $2 million payment

from Principal after the deal between PLL and Principal fell apart and Principal acquired Phase II without PLL. By its cause of action for breach of fiduciary duty by receiving secret profits, PLL alleged that all three defendants "abused their position of trust as PLL's agent and knowingly acted against PLL's interests by demanding and receiving from Principal a $2,000,000.00 secret profit" based on confidential information Carlton obtained as PLL's agent. Further, PLL alleged the defendants failed to disclose the "secret profit" to PLL. PLL's fifth cause of action was a claim for unjust enrichment against defendants Carlton Advisory Services, Inc. and The Carlton Group, Ltd. seeking disgorgement of the alleged $2 million secret profit.

3. Carlton's Motion for Summary Judgment/Summary Adjudication

Carlton moved for summary judgment or, in the alternative, summary adjudication as to each of PLL's claims. Because only the claims for breach of fiduciary duty by receiving secret profits and unjust enrichment are at issue, we limit our discussion to the arguments and evidence pertinent to those claims. Carlton proffered the same evidence in support of its motion as to both claims.

a. Proposed joint ventures and ultimate acquisition of Phase II by Principal

In July 2011, PLL and another firm, Skinner Development Group ("Skinner"), agreed to form a joint venture to acquire and develop Phase II. The other party to the venture was Michael Kriozere, through his company Urban West Associates of San Diego, LP. Kriozere was the developer associated with Phase I of

the same project. As part of this proposed Kriozere/PLL/Skinner joint venture, PLL and Skinner agreed to contribute approximately $21 million of the estimated $215 million in total capital required for the project.

Principal expressed interest in providing the equity investment for Phase II. In August 2011, a proposed term sheet was prepared contemplating another joint venture between Principal and the Kriozere/PLL/Skinner joint venture. The proposed term sheet provided that Principal would fund 95 percent of the estimated necessary equity investment of $92 million, and the Kriozere/PLL/Skinner venture would contribute $5 million.[2] PLL's president, Gilbert Platt, asked Carlton to assist in raising this $5 million co-investment. Beginning in January 2012, Carlton brought PLL multiple qualified offers to cover PLL's co-investment, but Platt did not accept any of them. According to Michaels' declaration, the joint venture with Principal never came to fruition due to PLL's failure to come up with the $5 million equity investment, disagreements between PLL and Kriozere on the terms of the joint venture with Principal, Platt's refusal to provide Principal with personal information needed by Principal to conduct a due diligence background check on him, and disagreements as to which entity would pay Carlton's fee for its work raising capital for the project.

Principal ultimately acquired Phase II in a deal that did not include PLL. Principal then engaged Kriozere's firm to develop Phase II.

---

[2] Skinner would drop out of the negotiations in October 2011.

b. Terms of Carlton's engagement

Carlton was approached in 2011 to help organize and raise capital from equity investors for a joint venture to acquire and develop Phase II. No written agreement was signed with Carlton identifying which entity would be responsible for Carlton's compensation for work towards the Phase II deal. However, all parties involved in the Phase II deal were advised that Carlton's normal fee was 3 percent of any financing or joint venture equity it facilitated, payable at time of closing. That 3 percent fee was budgeted into the financial projections on the deal.

Carlton's commission *was* addressed in a December 14, 2011 Purchase and Sale Agreement regarding the Phase II property. That agreement was entered into by the owner of the Phase II property, and by the "Buyer," 401 Harrison Investor, LLC, which was a subsidiary of Principal. A provision entitled "Broker's Commissions" stated in part that a commission to Carlton "shall be payable by . . . Buyer . . . at the Close of Escrow pursuant to a separate written agreement . . . ." Although this provision suggested a separate agreement regarding Carlton's fee was contemplated, no such agreement with Carlton was ever formalized. A subsequent iteration of the Purchase and Sale Agreement, dated January 25, 2012, contains two materially different versions of a paragraph entitled "Broker's Commissions": one version, initialed by the owner and seller, included the identical language from the December 14, 2011 agreement, providing that the Principal subsidiary would pay Carlton's commission , while the second version, initialed by the Buyer (the Principal subsidiary), omitted the reference to payment of a commission to Carlton. The parties submitted no evidence explaining the discrepancy between these two versions.

During the period when the deal involving PLL and Principal was falling apart, Michaels "again advised Platt that Carlton . . . would be due a 3% fee if a deal with Principal could be consummated. [Platt] did not dispute that such a fee would be due although he would not agree that the fee would come out of his part of any potential deal."

c. Principal's payment to Carlton

By February 2012, Principal advised Carlton that the deal with PLL was "dead" and Principal would not be doing any deal regarding Phase II with PLL. On March 16, 2012, Michaels was surprised to learn from an online news article that Principal had acquired Phase II. Ultimately, Carlton's attorneys negotiated a settlement of claims and releases with Principal, which included a payment of $2 million by Principal to Carlton in August 2012.

Carlton contended in its motion that it had not been in a fiduciary relationship with PLL, and even if it had been, the $2 million payment it accepted from Principal was not a "secret profit." To the contrary, all parties contemplated that Carlton would receive payment for the services it rendered, and the $2 million settlement payment from Principal to Carlton was for compensation that Carlton believed it was owed. Carlton further argued there was no cause of action for unjust enrichment under California law, and in any event, there was no evidence to show that Carlton was unjustly enriched by the $2 million payment or that the payment came at PLL's expense.

4. PLL's Opposition to Carlton's Summary Judgment / Summary Adjudication Motion

In its opposition to Carlton's motion, PLL asserted triable issues of material fact existed as to whether Carlton owed a fiduciary duty to PLL, and as to whether Carlton breached any such duty by demanding and receiving a $2 million payment from Principal. PLL argued that any benefits Carlton received as a result of its position and work as PLL's agent and broker on the Phase II deal—including the $2 million payment from Principal—properly belonged to PLL. PLL asserted that Carlton was only entitled to a fee if and when PLL became part of the entity that acquired Phase II. "Since Carlton represented PLL, PLL certainly did not contemplate that Carlton would receive a fee if Principal circumvented PLL."

As to the cause of action for unjust enrichment, PLL argued that some courts viewed such a cause of action as cognizable under California law, and, in any event, the trial court should liberally construe the cause of action as one for restitution.

a. Carlton's role on Phase II

PLL submitted a declaration from Platt, PLL's president, in support of its opposition to the motion for summary adjudication. Platt declared that in approximately April 2011, PLL orally "engaged Carlton as PLL's agent and real estate broker to negotiate the terms and conditions of PLL's acquisition and development of Phase II and to raise capital in the approximate amount of $20,000,000 for the acquisition and development of Phase II." In July 2011, Philip Powers, Carlton's managing director, emailed Platt a draft "Exclusive Equity Financing Advisory Agreement" between Carlton, on the one hand, and

Skinner and The Platt Companies (which included PLL), on the other hand. The draft document reflected the agreement to appoint Carlton as the "sole and exclusive broker and agent" for Skinner and the Platt Companies "with the exclusive right to negotiate and obtain . . . one or more mezzanine loan, preferred equity and/or joint venture equity term sheets, applications, indications of interest or other equity investment arrangements" for the Phase II project. In November 2011, Carlton's senior vice-president Gabriel Weinert sent Platt a subsequent draft "Debt & Equity Financing Agency Agreement" providing that PLL "hereby appoints Carlton as its sole and exclusive broker and agent" as to negotiations for loans or equity financing for the Phase II project. Together with PLL, Carlton performed "a massive amount of work on Phase II," including generating offering memoranda and financial analyses and participating in hundreds of phone calls and thousands of emails.

b. Compensation arrangement with Carlton

As set forth in his declaration, Platt had agreed in approximately April 2011 that PLL would "make arrangements for Carlton to be paid a reasonable fee . . . as a project cost by any entity in which PLL had an ownership interest and which acquired Phase II with capital raised by Carlton, if and when an entity in which PLL had an ownership interest acquired Phase II with capital raised by Carlton." The July 2011 draft equity financing advisory agreement Carlton emailed to Platt contained a provision stating that Skinner and the Platt Companies "shall pay Carlton a commission in an amount equal to three percent" of any commitment received from a party to the joint venture for financing or equity investments related to the project, upon

closing of the transaction. The later draft agreement sent by Carlton to Platt in November 2011 provided for an amended fee structure, with Carlton's fees to be paid by PLL. Neither of these agreements was ever signed by PLL. When it appeared the Phase II deal might close, Platt "brought the Carlton fee to the surface, and it was included in Phase II project budgets." Subsequently, however, Principal circumvented PLL and acquired Phase II.

c. Settlement between Carlton and Principal

PLL proffered deposition testimony from Michaels acknowledging Carlton's efforts, after Principal acquired Phase II without PLL, to obtain compensation from Principal. Carlton's legal team drafted a complaint including claims against both Principal and Kriozere, alleging causes of action for breach of contract, breach of implied-in-fact contract, breach of implied-in-law contract, quantum meruit, unjust enrichment, and breach of the implied covenants of good faith and fair dealing. After the draft complaint was provided to Principal's legal counsel in July 2012, Michaels emailed Principal's management and emphasized that Principal owed Carlton fair compensation for all the work Carlton had done to introduce Principal to the Phase II property; to negotiate the joint venture with the developer; to originate and underwrite the financing; and to provide substantial information to Principal throughout the process. Michaels threatened that Carlton would sue Principal to recover the compensation to which Michaels believed Carlton was entitled.

According to Platt's declaration, Platt eventually learned that Principal had paid Carlton $2 million. Platt did not learn about this payment until after it had been made.

5. The Court's Ruling Granting Summary Adjudication

After conducting a hearing, the trial court denied the motions for summary judgment and summary adjudication as to the first, second and third causes of action and granted summary adjudication as to the fourth and fifth causes of action. The court found a triable issue of fact remained as to the existence of an agency contract and the existence of a fiduciary relationship between Carlton and PLL. However, the court found no triable issue of fact remained as to whether Carlton had breached any fiduciary duty to PLL by accepting a $2 million payment from Principal. The court found it was undisputed that the $2 million payment by Principal to Carlton was made "in exchange for a settlement and release of all claims [Carlton] may have had against Principal. . . . The $2 million was therefore not a secret profit or a payment at [PLL's] expense but compensation for property that belonged to [Carlton], their claims against Principal."

PLL moved for reconsideration of the court's ruling. PLL argued "there is a triable issue of material fact as to whether Carlton's claims against Principal were Carlton's property or whether Carlton's claims against Principal were a benefit of the agency between PLL and Carlton," given that all the work for which Carlton sought compensation from Principal was done by Carlton as PLL's agent. PLL contended that Carlton was obligated to disgorge to PLL the $2 million, whether or not PLL had suffered a loss.

In its final written ruling, the court found that PLL's evidence submitted in opposition to the motion for summary adjudication was not sufficient to raise a triable issue of material fact as to whether Carlton breached its fiduciary duty "by

demanding and receiving a benefit of the agency/secret profit." The court found Carlton had presented evidence that it negotiated a settlement of claims and releases with Principal through its in-house and outside attorneys, leading to the $2 million payment in August 2012. The court thus granted Carlton's motion for summary adjudication as to the fourth cause of action. The court further found that summary adjudication of the claim for unjust enrichment was also appropriate because PLL had failed to raise a triable issue as to whether the $2 million payment to Carlton by Principal was unjust.

PLL timely appealed from the judgment entered following the bench trial resulting in the dismissal of the remaining three causes of action.

DISCUSSION

1. The Court Did Not Err in Granting Summary Adjudication

a. Standard of review

A motion for summary adjudication is properly granted only when "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (§ 437c, subd. (c).) Summary adjudication of a cause of action is "properly granted to a defendant who shows without rebuttal that the plaintiff cannot establish an element of his cause of action or that an affirmative defense bars recovery." (*Roberts v. Lomanto* (2003) 112 Cal.App.4th 1553, 1557 (*Roberts*).)

We review a grant of summary adjudication de novo and decide independently whether the facts not subject to triable dispute warrant a determination a cause of action has no merit

as a matter of law. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 286; *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618.) The evidence must be viewed in the light most favorable to the nonmoving party. (*Ennabe v. Manosa* (2014) 58 Cal.4th 697, 703; *Schachter*, at p. 618.)

b. No triable issue exists with respect to whether Carlton breached its fiduciary duty to PLL by accepting payment from Principal

To establish a cause of action for breach of fiduciary duty, a plaintiff must show the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 182.) On appeal, the parties do not dispute the trial court's finding that "there are triable issues of material fact as to whether Carlton was PLL's agent and real estate broker and owed a fiduciary duty to PLL."[3]

---

[3] Despite the evidence that PLL had engaged Carlton as its agent and real estate broker, it is not a foregone conclusion that Carlton still owed fiduciary duties to PLL when it demanded and accepted a payment from PLL. Both the demand and the acceptance of the payment occurred well after Principal had circumvented PLL and acquired Phase II on its own. An agent does not breach its fiduciary duty to a principal when the conduct at issue came *after* the termination of the agency relationship. (*Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 861 (*Van de Kamp*); see *Menzel v. Salka* (1960) 179 Cal.App.2d 612, 623 ["when the subject matter of the agency is sold or otherwise disposed of, the agency terminates"]; *Robinson v. Grossman* (1997) 57 Cal.App.4th 634, 646 ["[t]he duties of real estate agents, even to their own clients, terminate 'when the subject

The issue before us is whether a triable issue of material fact existed as to whether Carlton breached any fiduciary duty it owed to PLL by demanding and receiving a $2 million payment from Principal for Carlton's work towards the anticipated Phase II joint venture between PLL and Principal. PLL contends the payment by Principal constituted a "benefit of the agency between PLL and Carlton or a secret profit." However, as discussed below, Carlton's demand for and acceptance of the $2 million payment cannot reasonably be deemed a breach of whatever fiduciary duties Carlton may have owed PLL.

i. Carlton's duties owed to PLL

Assuming that PLL had engaged Carlton as its agent and real estate broker, Carlton owed PLL the duty to act "in the highest good faith" towards PLL. (*Batson v. Strehlow* (1968) 68 Cal.2d 662, 675.) Carlton's fiduciary obligations to PLL precluded it from making "any secret profit out of the subject of [its] agency" with PLL (*Savage v. Mayer* (1949) 33 Cal.2d 548, 551), or acquiring "'a material benefit from a third party in connection with . . . actions taken . . . through the agent's use of the agent's position.'" (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 416 (*Huong Que*), quoting Rest.3d Agency, § 8.02; see *Batson*, at p. 675 [agent may not obtain any advantage over its principal "in any transaction had by virtue of its agency"]; *Roberts, supra*, 112 Cal.App.4th at pp. 1563-1564 ["a real estate licensee, while acting in his or her capacity as such, must not receive any benefit from the transaction of his or her

---

matter of the agency is sold or otherwise disposed of'"].) However, that issue is not before us on this appeal.

agency other than that which is known and accepted by the principal" (italics omitted)].)

In the typical case in which these principles are at play, an agent or broker walks away from a transaction with an undisclosed profit or confidential information that it then uses for its own benefit. For instance, in *Crogan v. Metz* (1956) 47 Cal.2d 398 (*Crogan*), a group of brokers arranged a transaction among their respective clients, leading one client to believe her property was being sold for $100,000, when in fact it was sold for $115,000 to another broker's client, with the brokers keeping the extra $15,000. (*Id.* at pp. 400-401; see also *Roberts, supra*, 112 Cal.App.4th at p. 1568 [real estate agent failed to disclose to his seller client that buyer had paid agent a $1.2 million assignment fee; presumably buyer would have been willing to pay $1.2 million more towards the purchase price].) In *Huong Que,* the defendant agents were alleged to have utilized confidential information acquired from the principal's business, secretly organized a competing business, and solicited the principal's customers, all while ostensibly remaining the principal's agents. (*Huong Que, supra*, 150 Cal.App.4th at pp. 416-417.)

PLL does not suggest any self-dealing or underhanded conduct by Carlton in the course of Carlton's efforts to raise the equity needed for the Phase II project. For instance, PLL does not suggest that Carlton at any point during the process of trying to put together the Phase II joint venture had secret dealings or side deals with Principal, or that Carlton at any point undercut PLL. PLL makes no allegation that any better outcome was possible for PLL if not for Carlton's demand to Principal for payment of its fee.

Although the typical case involves deceit by the agent, bad faith on the agent's part is not a prerequisite to liability. Even if no bad faith by the agent is alleged, the agent may be required to disgorge to the principal any profits to the agent resulting from the agency, "'based upon the duties incident to the agency relationship and upon the fact that all profits resulting from that relationship belong to the principal.'" (*Crogan, supra*, 47 Cal.2d at pp. 404-405.) PLL contends that even if Carlton's fee did not come at PLL's expense, the $2 million payment is properly owed to PLL under the above principle.

Carlton counters that the $2 million payment was not a profit or benefit arising out of its agency with PLL, but rather payment of its reasonable fee. An agent's demand for and receipt of payment for his anticipated compensation cannot be deemed a breach of his duty of loyalty. (See *Savage v. Mayer, supra,* 33 Cal.2d at p. 551 ["[a]ll benefits and advantages acquired by the agent as an outgrowth of the agency, *exclusive of the agent's agreed compensation*, are deemed to have been acquired for the benefit of the principal" (italics added)]; *Crogan, supra,* 47 Cal.2d at pp. 404-405; *Van de Kamp, supra,* 204 Cal.App.3d at pp. 834-835; 2 Miller & Starr, Cal. Real Estate (4th ed. 2018) § 3:50 ["[a]ll benefits and advantages acquired by an agent in the performance of the agency, *except the agent's agreed-on compensation*, are deemed by law to have been acquired for the benefit of the principal" (italics added)]; cf. Lab. Code, § 2860 ["[e]verything which an employee acquires by virtue of his employment, *except the compensation which is due to him from his employer*, belongs to the employer" (italics added)].) An agent's compensation is not a "profit" or a "benefit" that rightly belongs to the principal. The key determination, therefore, is whether the $2 million from

Principal is properly deemed Carlton's expected compensation, or rather a profit or benefit arising out of its agency with PLL.

There is no dispute that Carlton did a great deal of work towards the Phase II project, including raising equity and preparing offering memoranda, and that it did not receive any payment from PLL. PLL, Principal, and the other parties involved in the proposed Phase II joint venture understood that Carlton expected to receive its usual 3 percent fee of any financing or joint venture equity it facilitated, payable at the time of closing. Further, that fee was budgeted into the financial projections on the deal.

Platt indicated that he intended Carlton would be paid its fee by "any entity in which PLL had an ownership interest and which acquired Phase II with capital raised by Carlton." Ultimately, PLL was not included among the entities that acquired Phase II. Because no deal was ever consummated that included PLL among the entities acquiring Phase II, PLL argues Carlton was not entitled to a fee from PLL, or from any other entity for that matter. Thus, according to PLL, the $2 million payment from Principal cannot be considered "agreed compensation," and Carlton's receipt of the payment was instead acceptance of a material benefit from a third party, which benefit properly belongs to PLL. We disagree.

PLL's argument rests on the premise that because Carlton was PLL's agent as to the Phase II project, only PLL could have paid "compensation" to Carlton, and payments from any other party for work on Phase II cannot be deemed "compensation." However, at no point was it agreed that PLL, as opposed to Principal or another yet-unformed entity, was going to be the payor of Carlton's fee associated with Phase II. Over the months

that the parties worked to put together a joint venture to acquire the Phase II property, PLL never signed any of the agreements drafted by Carlton proposing that PLL would be responsible for Carlton's fee. Implicitly, PLL intended and understood that if Principal were one of the other entities that ultimately acquired Phase II along with PLL, Principal would be at least partly responsible for Carlton's fee. It was even expressly contemplated in some of the applicable agreements concerning the purchase of the Phase II property that a Principal subsidiary would be solely responsible for paying Carlton's fee.[4] Given that the undisputed evidence demonstrates the parties contemplated Principal paying Carlton's fee at least in part, it would strain reason to categorize Principal's ultimate payment to Carlton not as fair compensation, but as payment of a "profit" or a "benefit" that was unanticipated by PLL. PLL has not cited to any case, and we are aware of none, in which an agent or broker has been found to have breached its fiduciary duties in remotely analogous circumstances.

Further, the undisputed evidence suggests that the deal to form a joint venture to acquire Phase II broke down in large part due to PLL's recalcitrance on issues such as Platt's refusal to provide personal financial information so that Principal could

---

[4] PLL argues we should not consider Carlton's argument made for the first time on appeal that it was "expressly contemplated" in these purchase and sale agreements that Principal would pay Carlton's commission. However, these agreements were included among the exhibits provided by Carlton in support of its motion for summary adjudication. Carlton was entitled to make this argument for the first time on appeal because "'the new theory presents a question of law to be applied to undisputed facts in the record.'" (*C9 Ventures v. SVC-West, L.P.* (2012) 202 Cal.App.4th 1483, 1492.)

conduct its due diligence. By preventing the deal from being consummated, PLL sabotaged Carlton's opportunity to obtain compensation for the work it unquestionably performed from the envisioned new entity in which both PLL and Principal would have had ownership shares. Even if the fault for the deal falling apart did not lie with PLL, it is clear that both PLL and Carlton lost out financially when the deal did not go through, after months of work devoted to the project by both entities. PLL itself sued Principal and was able to recoup $3 million for its own losses. And yet PLL seeks to block Carlton from recovering from Principal—the party that ultimately benefited from Carlton's contributions—the fair value of Carlton's work. Neither the law nor the particular equities here support a conclusion that Carlton breached its fiduciary duties to PLL by threatening to sue Principal and then settling the claims for $2 million. We agree with the trial court that no triable issue of material fact exists as to whether Carlton breached its fiduciary duties to PLL.

c. No triable issue of fact remains as to PLL's cause of action for unjust enrichment

The elements of a claim of unjust enrichment are (1) receipt of a benefit and (2) unjust retention of the benefit at the expense of another. (*Lyles v. Sangadeo-Patel* (2014) 225 Cal.App.4th 759, 769; see *Van de Kamp, supra,* 204 Cal.App.3d at pp. 854-855 ["Under the theory of unjust enrichment, the law implies a promise to return money wrongfully obtained. [Citation.] The basis of the action is the equitable principle 'a person should not be allowed to enrich himself at the expense of another.'"].) As discussed above, the $2 million paid by Principal to Carlton is properly deemed Carlton's compensation, as opposed to a

"benefit," and we conclude based on the undisputed facts that there was nothing unjust about its acceptance of this payment. Accordingly, the trial court properly granted summary adjudication in Carlton's favor on PLL's unjust enrichment claim.

DISPOSITION

The judgment is affirmed. Carlton shall recover its costs on appeal.

STONE, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.